IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5929 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAKASH TRIBHOVAN BAROT S/O TRIBHOVANDAS M BAROT

Versus

DISTRICT COLLECTOR

Appearance:

MR JAYANT PATEL for Petitioners

MR ND GOHIL, AGP, for respondents No.1 to 3.

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 29/06/2000

ORAL JUDGEMENT

1. The petitioners claim to be occupying Government waste land of Vokla in the vicinity of Gayatri Mandir Road of Deesa in Banaskantha district for about 30 to 35 years as hutment dwellers. They do not claim any title over the property, but they assert their possession for the abovesaid period. They are aggrieved by a sudden and

abrupt action initiated by the respondent authorities of demolishing some of the hutments or part thereof with the help of bulldozers without prior notice or intimation. They say that no notice is given to them and, therefore, they may be protected. The petitioners pray for a direction for regularisation of their possession.

2. Rule has been issued and has been served by direct service. Affidavit in this regard is also filed on behalf of the petitioners. Mr. Gohil, learned Assistant Government Pleader, appears for respondents No.1, 2 and 3. None appears for respondent No.4-Deesa Municipality.

3. Mr. Jayant Patel, learned advocate appearing for the petitioners, submitted that the petitioners are in occupation of these hutments for about 30 to 35 years. Somewhere in 1990, a representation for regularisation of occupancy was made to concerned authorities. In respect of of that representation, Deesa Municipality, after passing a resolution, recommended to the Government for the regularisation, but no action has been taken and suddenly a few days back, i.e. on the 10th June, 2000, at about 7.00 A.M., the City Survey Superintendent and the Mamlatdar, who is also the Chief Officer of Deesa Municipality, came with bulldozers and pulled down the premises occupied by the petitioners wholly or in part. Mr. Patel submitted that non of the premises are, in any way, obstruction to any road or traffic. Mr. Patel further contended that, before demolishing, procedure as prescribed under law, as laid down by the High Court, has not been followed. He submitted that no notice to the petitioners, before demolishing, is given. The action, therefore, is bad in law. The petitioners may, therefore, be protected. Mr. Patel, in support of his arguments, placed reliance on decision of this High Court in the case of Dalvadi Laljibhai Gatorbhai & Ors. v. State of Gujarat & Ors., 1995(2) GLR 974 as also the decision in case of Bhavnagar Municipal Corporation V. Nandumal Pahelumal rendered in Letters Patent Appeal No.264 of 1989 decided on October 17, 1989 by a Division Bench of this Court and the decision in the case of Nehru Marg Cabin Association v. Modasa Nagarpalika & Ors., 1988(1) GLR 441.

4. Mr. Gohil, learned Assistant Government Pleader, has opposed this petition. He has been instructed by Mr. N.B. Patel, Resident Deputy Collector, Palanpur. He states that the petitioners have encroached upon the Government property. They are not simple hutment dwellers, but they are indulging in commercial

activities. Only those premises which were used for commercial purpose have been demolished. Appropriate Panchnama have been drawn in this regard and, therefore, no indulgence is required to be done. It is submitted that the area is covered and wire fencing has been done. According to him, the occupancy is not of 35 years, but of about 10 years. He submitted that a public notice was issued prior to demolition. He was, however, at loss to show whether the procedure as prescribed in the case of Nehru Marg Cabin Association (supra) is followed.

5. In the facts and circumstances of the case, this matter is taken up for final hearing, at the request of learned advocates for parties.

6. The law on question involved may now be examined.

7. In Nehru Marg Cabin Association, the procedure was indicated thus :

"(i) The respondent authorities shall not take any action of removal of the petitioners from the business premises occupied by them without affording them an opportunity of being heard.

(ii) Such opportunity of being heard would also include:

(a) notice in writing to be served each of the occupants, calling upon him to show cause as to why he should not be removed from the place in question;

(b) the occupant concerned shall be afforded an opportunity of leading evidence in response to the notice; and

(c) the occupant concerned shall also be afforded an opportunity of being heard in person either by himself or through an Advocate;

(iii) In case the respondent-authorities after the inquiry as stated hereinabove, come to the conclusion that the occupant concerned is required to be removed from the place, and any decision adverse to the occupant is taken, the same shall not be implemented for a period of one month from the date of communication to the occupant.

(iv) The order that may be passed by the

respondent-authorities shall be served upon the occupant preferably by registered A.D. post. The same shall also be sent by an ordinary post under certificate of posting and the other shall also be affixed on the premises in question."

7.1 In Bhavnagar Municipal Corporation v. Nandumal Pehlumal (supra), a Division Bench of this Court observed thus:

"....even trespassers cannot be removed without affording an opportunity of being heard and without giving sufficient notice as as to enable them to remove themselves from the place alleged to have been encroached. The observations made and the conclusions arrived at in the case of Nehru Marg Cabin Association (supra) are eminently just and proper. We are of the opinion that in absence of prescribed procedure under any Act or rules, the procedure indicated in the aforesaid decision of this Court is required to be followed by the executive authorities before removing the persons who might have allegedly encroached upon the land of the public street."

8. Both these decisions were followed in the case of Dalvadi Laljibhai Gotorbhai v. State of Gujarat, 1995(2) GLR 974 by another Division Bench and it was held that principles of natural justice are required to be followed even in cases where the law/section does not provide for the same unless exceptional circumstances exist for departure from the ordinary rule.

9. The petitioners have sought following reliefs :-

"(A) A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction may kindly be issued, quashing and setting aside the action of the first respondent of demolishing the huts and the constructions belonging to the petitioners on 10th June, 2000 situated on the western side of Gayatri Mandir Road, in the area of Bakery Kuva Nala at Deesa, District Banaskantha:

(B) A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction may kindly be issued directing the respondents, their agents and servants to regularise the possession of the petitioners on any terms and conditions which may be deemed

just, fit and proper by this Hon'ble Court:

(C) Pending the admission and final hearing of this petition, an interim injunction may kindly be issued, restraining the respondents, their agents and servants from demolishing the huts/constructions/dwellings in possession of the petitioners situated on the western side of Gayatri Mandir Road of Bakery Kuva Nala at Deesa, Distt. Banaskantha:

(D) Be pleased to pass such other and further orders:

(E) Be pleased to award the costs of this petition to petitioners."

10. As can be seen from the rival side contentions, there is no dispute that demolition has taken place. There does not appear any reason for not following the procedure prescribed by the abovesaid decision in the case of Nehru Marg Cabin Association. A representation is claimed to have been made by the petitioners, which is pending and has not been considered till now. The petitioners do not claim any title over the property. They have occupied the Government waste land. Under the circumstances, at this stage, without making any observation on any right of the petitioners, the ends of justice would be met, if they are partially protected, as would be discussed in the following paragraphs.

11. The petitioners claim to have made a representation. If that is so, the authorities concerned would decide the representation in accordance with law as expeditiously as possible. If no such representation is received by the other side up-till-now, as is claimed, the petitioners may make a fresh representation for regularisation of their possession to the authorities concerned within 15 days from today and if such representation is made, the authorities concerned will decide the representation in accordance with law. Mr. Patel states that the petitioners are ready to pay the price that may be fixed by an authorised valuer of the Government, if the Government so decides to regularise the possession of the petitioners. The Government will decide the representation after giving due audience to the petitioners. In the event no representation is made within 15 days or in event of a representation being made, the authority decides not to accept the representation of the petitioners, the authorities will not proceed for demolition or for taking possession without following the procedure as laid down by this

Court in Nehru Marg Cabin Association, as stated earlier. Till then, the status quo existing, as on today, shall be maintained by all concerned. Rule is made absolute to the above extent. There shall be no orders as to costs.

Direct service is permitted.

[A.L. DAVE, J.]

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